Filed 8/29/16 In re D.M. CA4/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re D.M., a Person Coming Under the Juvenile Court Law.	
SAN BERNARDINO COUNTY CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. Z.M., Defendant and Appellant.	E066107 (Super.Ct.No. J263659) OPINION

APPEAL from the Superior Court of San Bernardino County. Erin K. Alexander, Judge. Affirmed in part; reversed in part and remanded with directions.

Rich Pfeiffer, under appointment by the Court of Appeal, for Defendant and Appellant.

Jean-Rene Basle, County Counsel, Jamila Bayati, Deputy County Counsel, for Plaintiff and Respondent.

Defendant and appellant Z.M. (mother) and V.M.[1] (father) are the parents of D.M. (minor, born November 2006). Mother's sole issue on appeal is that San Bernardino County Children and Family Services (CFS) failed to comply with the notice requirements of the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.). CFS agrees that the notice was inadequate. We agree with both parties that CFS failed to comply with ICWA and remand the matter, with directions to the juvenile court to ensure CFS's compliance with ICWA's notice requirements. We affirm the orders of the juvenile court in all other respects.

FACTUAL AND PROCEDURAL HISTORY[2]

On January 13, 2016, CFS filed a Welfare and Institutions Code section 300 petition on behalf of minor, reflecting mother's mental health issues, her failure to enroll minor in school, and father's failure to protect minor. An ICWA-010 attachment indicated that minor may have Indian heritage.

On January 19, 2016, at a detention hearing, mother filed an ICWA-020 form, checking the box indicating that she may have Indian ancestry. She wrote that she may have Indian heritage in the "Chawktow [*sic*]; Apache" tribes. The juvenile court confirmed that mother intended to state that she had Choctaw and Apache heritage, and asked her to complete "a JV030," the previous title for the ICWA-030 noticing form.

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[1] Father is not a party to this appeal.

[2] Because mother solely appeals from the ICWA noticing deficiencies, the facts will focus on the ICWA notices given by CFS.

CFS noticed the Bureau of Indian Affairs (BIA) and Secretary of the Interior with the dependency proceedings. However, these notices failed to include information on any of the relatives or name any tribe affiliation that mother provided. Moreover, CFS failed to notify the Choctaw tribe or the Apache tribe. On March 24, 2016, CFS submitted a second ICWA declaration. This, however, failed to cure the noticing deficiencies because a more complete ICWA-030 was not mailed, and again, neither the Choctaw nor Apache tribes were noticed.

On March 28 and 29, 2016, the juvenile court held a contested jurisdiction/disposition hearing. During the hearing, CFS advised the court and parties that CFS now recommended minor's removal from mother with family reunification services. At the end of the hearing, the juvenile court placed minor with the maternal grandmother. The court also ordered minor's removal from mother, and ordered that CFS conduct an emergency assessment of the maternal grandmother; mother was permitted to reside in the same residence as long as mother was not left alone with minor. The minute order stated that ICWA notice had been initiated and that ICWA may apply.

In the final ICWA declaration of due diligence filed for a hearing on April 13, 2016, the ICWA clerk stated that the original ICWA notices were sent on January 28, 2016, to the BIA, Secretary of the Interior and the tribes, as "identified by parents," and neither the BIA nor Secretary of State responded. Therefore, ICWA did not apply and "[n]o further notice is required." On April 15, 2016, the juvenile court found that "[n]otice has been conducted as required by the . . . (ICWA)," and ordered, "ICWA does not apply."

On May 18, 2016, mother filed a timely notice of appeal.

DISCUSSION

Mother contends that CFS failed to comply with ICWA's notice requirements because it failed to notice any of the appropriate tribes and failed to include essential information to the BIA and Secretary of the Interior. Therefore, mother asserts the lack of compliance with ICWA inquiry and noticing requirements mandates reversal.

"Congress enacted ICWA to further the federal policy '"that, where possible, an Indian child should remain in the Indian community . . . ."'" (*In re W.B.* (2012) 55 Cal.4th 30, 48.) "When applicable, ICWA imposes three types of requirements: notice, procedural rules, and enforcement. [Citation.] First, if the court knows or has reason to know that an '"Indian child"' is involved in a '"child custody proceeding,"' . . . the social services agency must send notice to the child's parent, Indian custodian, and tribe by registered mail, with return receipt requested. [Citation.] . . . [¶] Next, after notice has been given, the child's tribe has 'a right to intervene at any point in the proceeding.' [Citation.] . . . [¶] Finally, an enforcement provision offers recourse if an Indian child has been removed from parental custody in violation of ICWA." (*Id.* at pp. 48-49.) "Thorough compliance with ICWA is required." (*In re J.M.* (2012) 206 Cal.App.4th 375, 381.)

Of concern here is the notice requirement. If an agency "knows or has reason to know that an Indian child is involved" in a dependency proceeding, the agency must send notice of the proceeding to, among others, a representative of all potentially interested Indian tribes. (Welf. & Inst. Code, § 224.2, subd. (a).) "[F]ederal and state law require that the notice sent to the potentially concerned tribes include 'available information about the maternal and paternal grandparents and great-grandparents, including maiden, married and former names or aliases; birthdates; place of birth and death; current and former addresses; tribal enrollment numbers; and other identifying data.' [Citations.] To fulfill its responsibility, the Agency has an affirmative and continuing duty to inquire about, and if possible obtain, this information. [Citations.] Thus, a social worker who knows or has reason to know the child is Indian 'is required to make further inquiry regarding the possible Indian status of the child, and to do so as soon as practicable, by interviewing the parents, Indian custodian, and extended family members to gather the information required in paragraph (5) of subdivision (a) of [Welfare and Institutions Code] Section 224.2 . . . .' [Citation.] That information '*shall* include' '[a]ll names known of the Indian child's biological parents, grandparents, and great-grandparents, or Indian custodians, including maiden, married and former names or aliases, as well as their current and former addresses, birthdates, places of birth and death, tribal enrollment numbers, and any other identifying information, if known.' [Citation.] Because of their critical importance, ICWA's notice requirements are strictly construed." (*In re A.G.* (2012) 204 Cal.App.4th 1390, 1396-1397.)

In this case, mother claims that CFS failed to comply with ICWA because the notice failed to notice any of the appropriate tribes and failed "to include essential information to the BIA and Secretary of the Interior." In its response, CFS agrees with mother that a remand is warranted.

Here, as summarized above, mother indicated that she may have Indian ancestry with the Choctaw and Apache tribes. However, no ICWA notices were sent to any Indian tribes regarding mother's alleged Indian ancestry. ICWA notices were only sent to the BIA and Secretary of the Interior, which is insufficient notice when a federally-recognized tribe of heritage has been named by either parent. (*In re Alice M.* (2008) 161 Cal.App.4th 1189, 1202.) Moreover, the notices sent to the BIA and Secretary of the Interior failed to identify specific tribes and information on relatives.

Therefore, based on the above, the juvenile court's findings that proper notice was given under the ICWA is not supported by substantial evidence. A limited reversal and remand to clarify and cure any ICWA noticing defects is warranted,

DISPOSITION

The juvenile court's finding on April 16, 2016, that ICWA does not apply in the above-referenced case, and that no further notice is required, is vacated. The case is remanded to the juvenile court with directions to ensure CFS has complied with the notice requirements of ICWA. If, after new notices, any of the Choctaw, Apache or other tribes claim minor is eligible for membership and seek to intervene, the juvenile court shall proceed in conformity with all provisions of ICWA. If, on the other hand, none of

the tribes make such claims following new notices or the court concludes CFS's efforts at compliance were adequate, the inapplicability finding shall be reinstated.

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MILLER
J.

We concur:

HOLLENHORST
Acting P. J.

CODRINGTON
J.